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IN THE

Supreme Court of the United States

OCTOBER 1963 TERM.

No. 259

ADOLPH KAUKAS AND VERA KAUKAS, HIS WIFE,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS.

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THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO 58

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Appellee in the above-entitled case moves to dismiss on the ground that the question presented is so unsubstantial as not to need further argument.

STATEMENT.

The opinion of the Supreme Court of Illinois, 27 Ill. 2d 197 (Jurisdictional Statement, Appendix 1, p. 1a), by citing *Queenside Hills Realty Co.* v. *Saxl*, 328 U. S. 80 (1946) and *Goldblatt* v. *Town of Hempstead*, 369 U. S. 590 (1962), completely answers appellants' argument relative to the constitutional questions raised by appellants.

In the *Queenside* case, this court upheld a statute of the State of New York which provided that existing buildings

had to install certain new fire prevention equipment. It was there claimed that the building in question had a market value of about $25,000 and that the cost of complying with the statute would be about $7,000. This court said (328 U. S. at 82):

> "Little need be said on the due process question. We are not concerned with the wisdom of this Legislation or the need for it. [citation] Protection of the safety of persons is one of the traditional uses of the police power of the State. Experts may differ as to the most appropriate way of dealing with fire hazards in lodging houses. Appellant, indeed, says that its building, far from being a fire-trap, is largely fireproof; and to the extent that any fire hazards exist, they are adequately safeguarded by a fire alarm system, constant watchman service, and other safety arrangements. But the legislature may choose not to take the chance that human life will be lost in lodging house fires and adopt the most conservative course which science and engineering offer. It is for the legislature to decide what regulations are needed to reduce fire hazards to a minimum. . . . *But in no case does the owner of property acquire immunity against exercise of the police power because he constructed it in full compliance with the existing laws.*" (Emphasis added.)

In the *Goldblatt* case, the Town of Hempstead enacted an ordinance regulating dredging and pit excavating on property within its limits. Such ordinance prevented excavating below the water table and the enclosure of such excavation. It was claimed that the ordinance prohibited a beneficial use to which the property had previously been devoted and resulted in a deprivation of property for public use without just compensation therefor. This court held (369 U. S. at 593): ". . . A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a

taking or an appropriation of property for the public benefit."

In the case at bar, appellee's ordinance does not prohibit appellants from devoting their building to its present use but merely directs that the fire hazard of a glass panel door exit be eliminated for the purpose of protecting people in appellants' building.

Such ordinance is of a less restrictive nature than the one upheld by this court in the *Goldblatt* case.

In order to sustain their case, appellants claim (Jurisdictional Statement, p. 6) that appellee's ordinance is not a police power measure because it did not become effective until 5 years after it was enacted.

Appellants made this same contention below, but both the trial court and the Supreme Court of Illinois considered it so frivolous that neither one passed upon it.

Since appellee's ordinance gave owners of property containing glass panel doors, used as a secondary means of fire exit, 5 years in which to eliminate such doors and provide another fire exit, such ordinance treated such owners fairly and equitably and gave them more than ample time to comply with such ordinance.

If appellee's ordinance did not give such owners ample time to make the changes necessary to eliminate the glass panel door exits but required immediate compliance, then appellee could be charged with unfairness and arbitrary action.

Appellants jump from their frivolous claim as to the 5 year period to an equally frivolous claim that appellee's ordinance "is merely an architectural experiment with one type of an exit as against another type of an exit, and nothing more" (Jurisdictional Statement, p. 7).

Such claim, as the 5 year one, was also not passed upon by either the trial court or the Supreme Court of Illinois.

As a matter of fact, as pointed out in the opinion of the Supreme Court of Illinois (Jurisdictional Statement, p. 2a):

> ". . . There was considerable evidence in the present case dealing with the question of whether glass panel doors as a secondary means of exit are safe. We do not believe that it is necessary to go into this evidence in detail. In a verbal opinion, the trial judge stated that the evidence showed that there are many objections to a glass panel door as a secondary means of exit. For example, the tenants might not be familiar with the use of such a door and might be reluctant to break the glass and go into another tenant's apartment; persons could cut themselves on the broken glass; the door might be blocked by furniture; the tenants might not know how to reach the exit through the other apartment, etc. The judge stated that he was satisfied from the evidence that a glass panel door exit was not a first class exit and was not as satisfactory as a direct means of exit. Our review of the abstract satisfies us that these findings were amply supported by the evidence."

The abstract mentioned above, which is part of the record herein (Tr. 3), shows that appellee's fire officials and fire safety experts testified to the fact that glass panel doors are dangerous to use, conducive to the spread of fires, and responsible for fire deaths (Abst. 30, 48, 51, 52, 54, 55, 64, 65, 66, 72, 73, 74, 75, 76, 77, 78).

The abstract also shows (p. 54) that no municipality in Illinois, except appellee, allowed glass panel doors as a means of exit.

The abstract also shows (pp. 67-68) that glass panel doors as a secondary means of exit were permitted for converting of multiple dwellings into more dwelling units as a World War II emergency measure; that the Housing Code, which contains the ordinance involved herein was passed in 1956 after public hearings conducted by appellee's

City Council Building and Zoning Committee, attended by representatives of community organizations, appellee's corporation counsel, representatives of the building industry, architects, the association of Commerce and Metropolitan Housing and Planning Council.

Appellee's ordinance is a necessary and reasonable fire protection measure enacted pursuant to appellee's police powers. The benefits that the public derives therefrom and to which it is entitled far outweigh any expense that appellants or any other property owners may be put to in complying therewith.

Such ordinance does not violate any constitutional guarantees.

Appellee respectfully submits that the appellants present no substantial question for the decision of this court and pray that its motion to dismiss the appeal be allowed.

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